

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

JOANNE HARRIS, *et al.*,

Plaintiffs,

V.

ROBERT F. McDONNELL, JANET M.
RAINEY, and THOMAS E. ROBERTS,
in their official capacities

Defendants.

Civil Action No. 5:13-cv-00077

**STATE DEFENDANTS' MOTION TO SUSPEND SCHEDULING ORDER,
TO STAY BRIEFING OR, IN THE ALTERNATIVE,
TO ESTABLISH A BRIEFING SCHEDULE**

COME NOW Robert F. McDonnell, Governor of Virginia, and Janet M. Rainey, State Registrar of Vital Records, in their official capacities, by counsel, pursuant to Fed. R. Civ. P. 7(b), W.D. Va. Loc. R. 11(c), and this Court's Scheduling Order, (Doc. 43). In response to Plaintiffs' motion for summary judgment, (Docs. 44, 50-2), the State Defendants move this Court to stay the proceeding on the grounds that this action is not the first filed case raising the arguments now pressed by Plaintiffs on summary judgment, (Doc. 1, 50-2), and so should not be permitted to proceed while the earlier filed case, brought in the Norfolk Division of the Eastern District of Virginia, *Bostic, et al. v. Rainey, et al.*, No. 2:13-cv-00395 (Allen, J.), is proceeding on cross-motions for summary judgment under an agreed schedule. In the alternative, State Defendants request, for the reasons stated in the accompanying brief, that they be permitted to respond to Plaintiffs' motion for summary judgment after this Court's resolution of the Plaintiffs' motion to certify class, (Docs. 26, 27, 30, 36), and Defendants' dispositive motions, (Docs. 24, 25, 32, 33), which are scheduled to be argued, by agreement of the parties, on October 29, 2013.

(Doc. 41). If a summary judgment schedule is set the regular Scheduling Order, as it relates to trial preparation, should be suspended.

WHEREFORE, for the reasons stated herein and in the accompanying brief in support, State Defendants move that briefing on Plaintiffs' motion for summary judgment be stayed while cross-motions for summary judgment in the first-filed case remain unresolved or, in the alternative, that a briefing schedule for motions for summary judgment be established as stated above and set forth more fully in the accompanying brief. Should a summary judgment briefing schedule be set, the regular Scheduling Order as it relates to trial preparation should be suspended to avoid potentially wasteful proceedings.

Respectfully Submitted,

ROBERT F. MCDONNELL and
JANET M. RAINEY,
in their official capacities

By: _____/s/
E. Duncan Getchell, Jr.
Solicitor General of Virginia
(VSB No. 14156)
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
(804) 786-7240 – Telephone
(804) 371-0200 – Facsimile
dgetchell@oag.state.va.us

Kenneth T. Cuccinelli, II
Attorney General of Virginia

Rita W. Beale, VSB #37032
Deputy Attorney General
E-mail: rbeale@oag.state.va.us

Allyson K. Tysinger, VSB #41982
Senior Assistant Attorney General/Chief
E-mail: atysinger@oag.state.va.us

Michael H. Brady, VSB #78309
Assistant Solicitor General
E-mail: mbrady@oag.state.va.us

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of October 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to counsel who are registered CM/ECF users.

/s/

E. Duncan Getchell, Jr.